

has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard.

(g) Any penalty imposed for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation and shall take into consideration efforts of such user, owner or operator of the Bulk-Power System to remedy the violation in a timely manner.

(1) The penalty imposed may be a monetary or a non-monetary penalty and may include, but is not limited to, a limitation on an activity, function, operation, or other appropriate sanction, including being added to a reliability watch list composed of major violators that is established by the Electric Reliability Organization, a Regional Entity or the Commission.

(2) The Electric Reliability Organization shall submit for Commission approval penalty guidelines that set forth a range of penalties for the violation of Reliability Standards. A penalty imposed by the Electric Reliability Organization or a Regional Entity must be within the range set forth in the penalty guidelines.

§ 39.8 Delegation to a Regional Entity.

(a) The Electric Reliability Organization may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the Electric Reliability Organization and enforcing Reliability Standards under § 39.7.

(b) After notice and opportunity for comment, the Commission may approve a delegation agreement. A delegation agreement shall not be effective until it is approved by the Commission.

(c) The Electric Reliability Organization shall file a delegation agreement. Such filing shall include a statement demonstrating that:

(1) The Regional Entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

(2) The Regional Entity otherwise satisfies the provisions of section 215(c) of the Federal Power Act; and

(3) The agreement promotes effective and efficient administration of Bulk-Power System reliability.

(d) The Commission may modify such delegation.

(e) The Electric Reliability Organization shall and the Commission will rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of Bulk-Power System reliability and should be approved.

(f) An entity seeking to enter into a delegation agreement that is unable to reach an agreement with the Electric Reliability Organization within 180 days after proposing a delegation agreement to the Electric Reliability Organization may apply to the Commission to assign to it the Electric Reliability Organization's authority to enforce Reliability Standards within its region. The entity must demonstrate in its application that it meets the requirements of paragraph (c) of this section and that continued negotiations with the Electric Reliability Organization would not likely result in an appropriate delegation agreement within a reasonable period of time. After notice and opportunity for hearing, the Commission may designate the entity as a Regional Entity and assign enforcement authority to it.

(g) An application pursuant to paragraph (f) of this section must state:

(1) Whether the Commission's Dispute Resolution Service, or other alternative dispute resolution procedures were used, or why these procedures were not used; and

(2) Whether the Regional Entity believes that alternative dispute resolution under the Commission's supervision could successfully resolve the disputes regarding the terms of the delegation agreement.

§ 39.9 Enforcement of Commission Rules and Orders.

(a) The Commission may take such action as is necessary and appropriate against the Electric Reliability Organization or a Regional Entity to ensure compliance with a Reliability Standard or any Commission order affecting the Electric Reliability Organization or a

Regional Entity, including, but not limited to:

(1) After notice and opportunity for hearing, imposition of civil penalties under the Federal Power Act.

(2) After notice and opportunity for hearing, suspension or decertification of the Commission's certification to be the Electric Reliability Organization.

(3) After notice and opportunity for hearing, suspension or rescission of the Commission's approval of an agreement to delegate certain Electric Reliability Organization authorities to a Regional Entity.

(b) The Commission may periodically audit the Electric Reliability Organization's performance under this part.

§ 39.10 Changes to an Electric Reliability Organization Rule or Regional Entity Rule.

(a) The Electric Reliability Organization shall file with the Commission for approval any proposed Electric Reliability Organization Rule or Rule change. A Regional Entity shall submit a Regional Entity Rule or Rule change to the Electric Reliability Organization and, if approved by the Electric Reliability Organization, the Electric Reliability Organization shall file the proposed Regional Entity Rule or Rule change with the Commission for approval. Any filing by the Electric Reliability Organization shall be accompanied by an explanation of the basis and purpose for the Rule or Rule change, together with a description of the proceedings conducted by the Electric Reliability Organization or Regional Entity to develop the proposal.

(b) The Commission, upon its own motion or upon complaint, may propose a change to an Electric Reliability Organization Rule or Regional Entity Rule.

(c) A proposed Electric Reliability Organization Rule or Rule change or Regional Entity Rule or Rule change shall take effect upon a finding by the Commission, after notice and opportunity for public comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of § 39.3.

§ 39.11 Reliability reports.

(a) The Electric Reliability Organization shall conduct assessments as determined by the Commission of the reliability of the Bulk-Power System in North America and provide a report to the Commission and provide subsequent reports of the same to the Commission.

(b) The Electric Reliability Organization shall conduct assessments of the adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, each Regional Entity, and each Regional Advisory Body annually or more frequently if so ordered by the Commission.

§ 39.12 Review of state action.

(a) Nothing in this section shall be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any Reliability Standard, except that the State of New York may establish rules that result in greater reliability within that state, as long as such action does not result in lesser reliability outside the state than that provided by the Reliability Standards.

(b) Where a state takes action to ensure the safety, adequacy, or reliability of electric service, the Electric Reliability Organization, a Regional Entity or other affected person may apply to the Commission for a determination of consistency of the state action with a Reliability Standard.

(1) The application shall:

(i) Identify the state action;

(ii) Identify the Reliability Standard with which the state action is alleged to be inconsistent;

(iii) State the basis for the allegation that the state action is inconsistent with the Reliability Standard; and

(iv) Be served on the relevant state agency and the Electric Reliability Organization, concurrent with its filing with the Commission.

(2) Within ninety (90) days of the application of the Electric Reliability Organization, the Regional Entity, or other affected person, and after notice and opportunity for public comment, the Commission will issue a final order